HIGH COURT OF UTTARANCHAL AT- NAINITAL

Writ Petition No. 224 (M/S) 2004

Atma Ram S/o Phool Singh,
R/o village-Kutubpur,
Tehsil & District Haridwar. …..Petitioner.

Vs.

Addl. District Judge/IV F.T.C., Haridwar,
And five others. ...Respondents.

Sri Lok Pal Singh, learned counsel for the petitioner,
Sri U.K. Uniyal, learned counsel for the Tehri Hydro Development Corporation.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Lok Pal Singh, learned counsel for the petitioner and Sri U.K. Uniyal, learned counsel for the Tehir Hydro Development Corporation.

By means of this writ petition, the petitioner has prayed for a writ, order or direction in the nature of certiorari for quashing of the judgment and order dated 13.12.2001 and 03.02.2004 passed by learned courts below.

The facts of the case are that the petitioner file a suit no. 134 of 1985 before Civil Judge (Jr. Div.), Haridwar for permanent injunction against the respondents with the contention that the petitioner was in possession of the property in dispute on the basis of "Patta" granted in his favour by the Irrigation Department, as such, the respondents may be restrained from interfering with his possession.

Perusal of the record reveals that the land in dispute was transferred by the Irrigation Department under the control of Tehri Hydro Development Corporation in the year 1983 for rehabilitation of dispossessed person because of the construction of Tehri Dam. The "Patta" granted to the petitioner was cancelled by the Irrigation Department in the year 1983. Counsel for the petitioner has submitted that the petitioner earlier has field writ petition before the Allahabad High Court, however, the same was dismissed on the ground that the petitioner has alternative remedy to file a suit consequently, the suit was field by the petitioner.

Contention of the petitioner is that he is in possession in the land in dispute and no legal proceedings have been initiated against him for

his eviction. The trial Court has framed issue no. 1 with the effect as to whether the suit is barred by the provision of Section 331 of U.P. Zamindari Abolition & Land Reform Act. After hearing learned counsel for both the parties, the learned trial Court has decided issue no. 1 against the petitioner vide its order dted 13.12.2001. Aggrieved by the order passed by the trial Court, the petitioner preferred appeal and the learned Lower Appellate Court has dismissed the appeal vide its judgment dated 03.02.2004 which is impugned in the writ petition.

I have perused the order passed by the Civil Judge, Haridwar as well as the judgment passed by the Lower Appellate Court, Haridwar. The trial Court as well the learned Lower Appellate Court have given categorical findings that the land in dispute was given under the control of Tehri Hydro Development Corporation in the year 1989 and the "Patta", which was granted by the Irrigation Department in favour of the plaintiff, was cancelled in the year 1983. The Lower Appellate Court has placed reliance upon the decision of Allahabad High Court reported in 1997 ACJ, page 900 and has held that since the question of title is involved in this matter consequently, the petitioner has remedy before the Revenue Court. I find no illegality or perversity in the orders impugned.

Accordingly, the writ petition is dismissed. No order as to costs.

(M.M. Ghildiyal, J.)

April 1 , 2004
NCM: